

E-002/CN-91-19 ORDER ACCEPTING FILING AS SUBSTANTIALLY COMPLETE
AND AUTHORIZING EXECUTIVE SECRETARY TO VARY TIME REQUIREMENTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Application
for a Certificate of Need for
Construction of an Independent
Spent Fuel Storage Installation

ISSUE DATE: July 18, 1991

DOCKET NO. E-002/CN-91-19

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SUBSTANTIALLY COMPLETE AND
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PROCEDURAL HISTORY

I. FILINGS TO DATE

A. The Application and Solicitation of Comments

On April 29, 1991 Northern States Power Company (the Company) filed an application for a certificate of need to build a nuclear waste storage facility at its Prairie Island nuclear power plant. That same day, the Commission issued a memorandum asking interested persons to file comments on whether the filing should be accepted as substantially in compliance with the certificate of need filing requirements, set forth in Minn. Stat. § 216B.243 (1990) and Minn. Rules, part 7855.0010 through 7855.0670.¹

The Minnesota Department of Public Service (the Department), the Prairie Island Mdewakanton Sioux Indian Community (the Indian Community), the Minnesota Public Interest Research Group (MPIRG), the North American Water Office (NAWO), and Minnesotans for an Energy Efficient Economy (ME3) filed comments, with NAWO and ME3 filing jointly. All commenting persons claimed the filing should not be accepted as substantially complete until the Company had provided additional information.

¹ The Commission had earlier extended the period for examining the application's compliance with certificate of need filing requirements from 15 to 30 days. ORDER VARYING MINN. RULES, PART 7855.0200 TO EXTEND INITIAL REVIEW PERIOD, this docket number (January 24, 1991).

B. Supplementary Filings and Comments

The Commission agreed that further information was necessary and on May 29, 1991 issued its ORDER REQUIRING SUPPLEMENTARY FILINGS TO COMPLETE APPLICATION. That Order identified 19 subject areas requiring further development. The Company made supplementary filings on June 12, June 14, and June 28, 1991.

All parties who had commented on the original filing, plus Thomas Flood, formerly of MPIRG, filed comments on the supplementary filings. NAWO and ME3 again filed jointly. Except for the Department, all commenting parties continued to maintain that the application was not yet substantially complete.² Their objections to the application as supplemented are summarized below.

1. The Indian Community's Comments

The Indian Community maintained the application should not be accepted as substantially complete until the Company stated and demonstrated its intention to comply with the Community's Nuclear Radiation Control Ordinance. Among other things, that Ordinance prohibits the transportation of radioactive substances through tribal land without a license from the Tribal Council. The licensing procedure involves an assessment of whether the health and safety risks posed by a particular shipment are within permitted levels. The Company is refusing to comply with the Ordinance on grounds that it is legally invalid.

The Indian Community claimed the Company should be required to conduct further research on the proposed facility's effect on local wildlife and a neighboring state forest. The Community also saw a need for more detailed information on the alternative Monticello site, existing land uses at the proposed site, and maintenance of the proposed facility.³ Finally, the Indian Community concurred in the comments of NAWO and ME3.

² The Department believed the Company had not provided the precise information required in the May 29 Order and had not used the prescribed format, but had provided equivalent information which made the application substantially complete. The Department believed the merits of the application were now coming to the fore and that it was time to begin evidentiary hearings.

³ The Company provided additional information in its June 28 filing addressing some of these concerns.

2. Comments of NAWO and ME3

In their joint comments, the North American Water Office (NAWO) and Minnesotans for an Energy Efficient Economy (ME3) stated that the Company's supplemented application continued to underestimate the impact of conservation efforts likely to occur over the life of the proposed facility. They claimed the Company's data on conservation was based on a lower level of public awareness and commitment than currently exists. They also concurred in the comments of the Indian Community.

3. MPIRG's Comments

MPIRG argued that the Company's supplemented filing failed to articulate and justify a clear standard for acceptable health and safety risk and failed to show that the proposed facility met that standard. MPIRG also claimed that the conservation data filed by the Company was outdated and incomplete.

4. Comments of Thomas Flood

Thomas Flood filed comments claiming the application was still incomplete for failure to adequately address alleged needs for a construction permit from the Minnesota Department of Health under Minn. Rules, part 7855.0240 and legislative approval under Minn. Stat. § 216C.72 (1990). Mr. Flood also claimed the Company's treatment of conservation alternatives was inadequate.

5. Comments of Senator Wellstone

While not intending to participate as a party, the Honorable Paul D. Wellstone, U. S. Senator from Minnesota, wrote a letter to the Commission expressing concerns in five areas: 1. the health and safety of nearby residents, who for the most part are members of the Prairie Island Indian Community; 2. the Company's refusal to comply with the Indian Community's Nuclear Radiation Control Ordinance; 3. the Company's compliance with Federal Emergency Management Agency regulations; 4. the possibility that the proposed facility would become a regional monitored retrievable storage site; 5. the possibility that conservation could eliminate the need for the facility.

C. Proceedings Before the Commission

The matter came before the Commission on July 15, 1991. The Commission heard oral comments from the Company, the Indian Community, the Department, and ME3/NAWO. Two members of the public, Stacey Majerus-Forehand and David St. Cyr, also spoke.

Having examined the filings and having heard oral comments from the parties and members of the public, the Commission makes the following findings of fact, conclusions, and order.

FINDINGS AND CONCLUSIONS

II. THE APPLICATION IS SUBSTANTIALLY COMPLETE

The Commission agrees with the Department that the Company's application is now substantially complete and should proceed to examination on the merits. While the parties claiming incompleteness raise many legitimate issues, the Commission believes those issues are more closely related to the merits of the Company's application than to its completeness. The remaining objections to the Company's filing can be addressed more efficiently through discovery, introduction of evidence, cross examination, and argument, than by requiring the Company to make further filings.

This is not to say that the Commission considers the existing factual record fully developed, only that the Commission considers the formal evidentiary process the best way to complete its development. The Commission has continuing concerns in regard to Company compliance with the Indian Community's Nuclear Radiation Control Ordinance; energy savings reasonably achievable through conservation; the feasibility of reprocessing used fuel, generating power by means of renewable resources, and other alternatives to above-ground storage; the possibility of the proposed facility becoming permanent due to federal inability to establish a permanent nuclear waste depository; the appropriate standard for risk assessment and for quantifying risk-associated costs; the Company's emergency preparedness; and the eventual costs of transporting the casks from the proposed facility to the permanent federal nuclear waste depository. The Commission will highlight these concerns in its Notice and Order for Hearing, and expects that they will be vigorously litigated in contested case proceedings, which the Commission will initiate today by separate Order. The Commission does believe, however, that it is time for contested case proceedings to begin.

III. THE EXECUTIVE SECRETARY MAY VARY TIME REQUIREMENTS

Under Minn. Stat. § 216B.243, subd. 5 (1990), the Commission is required to act on the Company's application within six months of filing.⁴ By separate Order issued today, the Commission has

⁴ The Company has waived the statutory time frame and stated it wished the six month period to run from the date of this Order, instead of from Commission receipt of a substantially complete application.

referred this case to the Office of Administrative Hearings for contested case proceedings and public hearings.⁵

Meeting the six-month deadline in a case this complex will place the Commission, the Administrative Law Judge, and all parties under severe time constraints. It is likely that standard comment periods and filing deadlines will have to be accelerated. To streamline this process the Commission will authorize the Executive Secretary to vary the time requirements of its Rules of Practice and Procedure, Minn. Rules, part 7830.0100 et seq. when necessary. Any party adversely affected by such a variance may bring the matter before the Commission.

ORDER

1. Northern States Power Company's April 29, 1991 certificate of need application, as supplemented on June 12, June 14, and June 28, 1991, is accepted as being in proper form and substantially complete.
2. The Commission authorizes the Executive Secretary to enter Orders on behalf of the Commission varying time requirements for the filing of pleadings and other documents and determining the conduct of this proceeding, under the standards set forth in Minn. Rules, part 7830.4400. Any party aggrieved by such an Order shall file a motion for reconsideration no later than the earlier of the following: five days from the date of the Order or one day before any deadline or the occurrence of any act specified in the Order. Such motions will be heard by the Commission.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

⁵ NOTICE AND ORDER FOR HEARING, this docket number.